

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEITH L. MARIS, *et al.*,

Plaintiffs,

vs.

NEVADA CAPITAL INSURANCE
COMPANY,

Defendant.

Case No. 2:11-cv-01933-GMN-CWH

**ORDER AND FINDINGS
AND RECOMMENDATION**

Application to Proceed *In Forma
Pauperis* (#1) and Screening of
Complaint

This matter is before the Court on Plaintiffs' Application to Proceed in Forma Pauperis (#1), filed December 5, 2011.

BACKGROUND

Plaintiffs allege that they have an insurance contract with Defendant. On December 8, 2010, Plaintiffs home was substantially damaged in a fire. After contacting Defendant, Plaintiffs hired an independent adjuster to assess the loss incurred as a result of the fire. During the claims process a dispute arose as to the extent of the damage and value of the claim. The complaint in this matter alleges that Defendant (1) breached its contract with Plaintiffs; (2) violated Nevada's Unfair Claims Practices Act, NRS 686A.310, (3) breached the implied covenant of good faith and fair dealing, (4) breached its fiduciary duties, (5) violated NRS 684A.01 *et seq.*, and (6) through its actions intentionally or negligently inflicted emotional distress. Along with damages, Plaintiffs seek declaratory relief. All of the claims asserted by Plaintiffs are brought under Nevada state law.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiffs filed this instant action and attached a financial affidavit to their application and complaint as required by 28 U.S.C. § 1915(a). Reviewing the financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to how to cure its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

A. Jurisdiction

As a general matter, federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises

1 under' federal law either where federal law creates the cause of action or 'where the vindication
2 of a right under state law necessarily turn[s] on some construction of federal law.'" *Republican*
3 *Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd.*
4 *v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of
5 federal-question jurisdiction is governed by the "well-pleaded complaint rule." *Caterpillar, Inc.*
6 *v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, "federal
7 jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly
8 pleaded complaint." *Id.* Plaintiffs have not stated any federal claims. All of Plaintiffs' claims
9 against Defendant are contractual or tort claims arising under state law, and no federal question
10 jurisdiction pursuant to 28 U.S.C. § 1331 exists.

11 **B. Diversity Jurisdiction**

12 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil
13 actions in diversity cases "where the matter in controversy exceeds the sum or value of \$75,000"
14 and where the matter is between "citizens of different states." Plaintiffs have not invoked the
15 court's diversity jurisdiction pursuant to 28 U.S.C. § 1332 because they have not alleged that the
16 parties are citizens of different states. To the contrary, the complaint indicates that all parties are
17 citizens of Nevada.

18 Because all of the claims arise under Nevada state law and the parties are all citizens of
19 Nevada, the Court finds that it does not have jurisdiction under either 28 U.S.C. § 1331 or 28
20 U.S.C. § 1332

21 Accordingly,

22 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed In Forma Pauperis
23 (#3) is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of three hundred fifty
24 dollars (\$350.00).

25 **IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this
26 action to conclusion without the necessity of prepayment of any additional fees or costs or the
27 giving of security therefor. This Order granting leave to proceed *in forma pauperis* shall not
28 extend to the issuance of subpoenas at government expense.

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